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Atty. Docket No. REV02 P-300

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May 5, 2003  
Date

Melanie S. Jernberg  
Melanie S. Jernberg

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Art Unit : 2859  
Examiner : M. Jagan  
Applicant : Joseph D. Revnell  
Appln. No. : 09/505,119  
Filing Date : February 16, 2000  
For : MEASURING AND LAYOUT DEVICE

Mail Stop Appeal Brief - Patents  
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TRANSMITTAL OF APPEAL BRIEF  
(PATENT APPLICATION - 37 CFR §1.192)

1. Transmitted herewith, in triplicate, is the APPELLANT'S BRIEF in this application, with respect to the Notice of Appeal filed on March 5, 2003.

2. STATUS OF APPLICANTS

This application is on behalf of:

other than a small entity.

a small entity.

A verified statement:

is attached.

was already filed.

3. FEE FOR FILING APPEAL BRIEF

Pursuant to 37 CFR §1.17(c), the fee for filing the Appeal Brief is:

small entity \$160.00

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other than a small entity

Appeal Brief fee due: \$160.00

4. **EXTENSION OF TERM**

The proceedings herein are for a patent application and the provisions of 37 CFR §1.136 apply.

(*complete (a) or (b), as applicable*)

(a)  Applicant petitions for an extension of time under 37 CFR §1.136:

<u>Extension (months)</u>	<u>Fee for other than small entity</u>	<u>Fee for small entity</u>
<input type="checkbox"/> one month	\$110.00	\$55.00
<input type="checkbox"/> two months	\$410.00	\$205.00
<input type="checkbox"/> three months	\$930.00	\$465.00
<input type="checkbox"/> four months	\$1450.00	\$725.00

FEE: \$\_\_\_\_\_

If an additional extension of time is required, please consider this a petition therefor.

(*check and complete the next item, if applicable*)

An extension for \_\_\_\_\_ months has already been secured, and the fee paid therefor of \$\_\_\_\_\_ is deducted from the total fee due for the total months of extension now requested.

Extension fee due with this request: \$\_\_\_\_\_

*or*

(b)  Applicant believes that no extension of term is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

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**5. TOTAL FEE DUE**

The total fee due is:

Appeal Brief fee: \$160.00

Extension fee (if any)

**TOTAL FEE DUE: \$160.00**

**6. FEE PAYMENT**

x Attached is a check in the sum of \$160.00.

— Charge Account No. 16 2463 the sum of \$\_\_\_\_\_.

A duplicate of this transmittal is attached.

**7. FEE DEFICIENCY**

x If any additional extension and/or fee is required, this is a request therefor and to charge Account No. 16 2463.

*and/or*

x If any additional fee for claims is required, charge Account No. 16 2463.

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Respectfully submitted,

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By: Price, Heneveld, Cooper,  
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Atty. Docket No. REV02 P-300

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Art Unit : 2859  
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APPELLANT'S BRIEF (37 CFR §1.192)

This brief is in furtherance of the Notice of Appeal, filed in this case on March 5, 2003.

The fees required under §1.17(f), and any required petition for extension of time for filing this brief and fees therefor, are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

This brief is transmitted in triplicate. (37 CFR §1.192(a)).

This brief contains these items under the following headings, and in the order set forth below (37 CFR §1.192(c)):

- I. Real Party in Interest
- II. Related Appeals and Interferences
- III. Status of Claims
- IV. Status of Amendments
- V. Summary of Invention
- VI. Issues
- VII. Grouping of Claims
- VIII. Arguments
- IX. Conclusion

Appendix of Claims Involved in the Appeal

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Appendix of Claims

Appendix of Cited Art

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## TABLE OF AUTHORITY

### Case Authority

*In re Fine,*

5 U.S.P.Q.2d 1586 (Fed. Cir. 1988) . . . . . 23, 27,  
, 33, 34, 35, 36, 39, 40, 41, 42, 44, 45, 46, 47, 48

*In re Merck & Co., Inc.,*

231 U.S.P.Q. 375 (Fed. Cir. 1986) . . . . . 23, 27,  
34, 35, 36, 39, 41, 42, 44, 45, 46, 47, 48

*In re Royka,*

180 U.S.P.Q. 550 (C.C.P.A. 1974) . . . . . 23, 27,  
30, 32, 34, 35, 36, 39, 40, 41, 42, 44, 45, 46, 47, 48

*In re Rijchaert,*

28 U.S.P.Q.2d 1955, 1957 (Fed. Cir. 1993) . . . . . 22, 31, 45

*Studiengesellschaft Kohle v. Dart Indus.,* . . . . . 21

762 F.2d 724 (Fed. Cir. 1984)

*Ex parte Levy,*

17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. and Inter. 1990) . . . . . 22, 31, 46

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The final page of this brief bears the attorney's signature.

**I. Real Party in Interest**

The named applicant is the party in interest in this application.

**II. Related Appeals and Interferences**

There are no related appeals or interferences pending during this application.

**III. Status of Claims**

Claims 2-18 and 25-69 are pending in this application. Claims 26-29 and 68 are allowed. Claims 2-18, 25, 30-67 and 69 are the subject of this appeal. All appealed claims are finally rejected. Claims 19-24 were cancelled in an Amendment under §1.111 mailed on August 9, 2001 and claim 1 was cancelled in an Amendment Under §1.111 mailed on January 21, 2002.

**IV. Status of Amendments**

No amendments have been filed after the Notice of Appeal.

**V. Summary of the Invention**

As described in the specification portion of the application (pages 1-15), and illustrated in the related figures (Figs. 1-17), the invention recited in the finally rejected claims relates to a unique measuring and layout device and method of using the same.

As a matter of background, measuring instruments are used to measure a space of a room in order to be able to cut carpet, vinyl, etc. to accurately fit the room. Heretofore, the measuring instruments and methods for measuring have included the use of paper patterns and the methods of square and measure, approximation, or cut in place. When a paper pattern is used to measure the dimensions of an area, a large sheet of paper is placed over the area, and the paper is cut to have the same dimensions as the area. The paper patterns, however, can only be used once for each measurement. Moreover, if the area is very large, a sizeable

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amount of paper can be used for each project adding up to a waste of resources over a period of time. The method of square and measure employs a carpenter square to measure the size of rectangles making up a polygonal room. The measurements of the rectangles are then reproduced on a sheet good and the sheet good is cut to the shape of the rectangles. The method of square and measure, however, only allows for measurements of areas made up of a plurality of rectangles. The method of approximation comprises approximating the size and shape of the area and cutting the sheet good to that approximation. The sheet goods are then placed over the area and cut to fit the proper proportions. This method can be very time consuming and wasteful. The method of cut in place comprises placing the sheet good over the area and then cutting the sheet good to fit the area. This method can also be very time consuming. (See the present specification, page 1, lines 5-25.)

The present invention is designed to alleviate those disadvantages discussed above with respect to prior art measuring instruments and methods. The present invention includes a measuring and layout device 10 having a stationary member 12 and an angle and distance device 15 adjacent to the stationary member 12. Preferably, the angle and distance device 15 is fixedly and rotatably attached to the stationary member 12. The angle and distance device 15 includes a longitudinally rigid and laterally rigid extendable tape 58 that facilitates reliably marking on the stationary member 12 to form an accurate template 20 as the angle and distance device 15 is rotated and the tape 58 is extended and retracted to critical features 88 of an area 22. The template 20 is used to record dimensions 21 of the area 22 and to mark the dimensions 21 on a sheet good 24 (FIG. 6), such as floor covering (e.g. vinyl), wall covering (e.g. paneling), or the like.

The stationary member 12 preferably has a substantially semi-circular configuration (FIG. 1) with a straight edge 13 between two circumferential ends 17 of the semi-circle. The stationary member 12 includes a top surface 26 that can be erasably marked on. Alternatively, a sheet of paper can be attached to the surface 26 to be marked on. The angle and distance device 15 is pivotally mounted to the top surface 26 of the stationary member 12. Preferably, the angle and distance device 15 is pivotally connected to the stationary member 12 by a snap fastener 28 that allows the angle and distance device 15 to be removed from the stationary

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member 12. The snap fastener 28 also allows the angle and distance device 15 to rotate 360 degrees relative to the stationary member 12. Therefore, the angle and distance device 15 can be removed from a first stationary member and then attached to a second stationary member. The snap fastener 28 therefore allows the angle and distance device 15 to be used with several different stationary members 12. A rivet could also connect the angle and distance device 15 to the stationary member 12, thereby securely connecting the angle and distance device 15 to the stationary member 12.

As seen in Figure 5, the measuring and layout device 10 is used by first choosing the appropriate stationary member 12. The stationary member 12 is then placed on an area 22 to be measured. The tape measure 18 is then extended to a critical feature 88 on the area 22 to be measured. The critical feature 88 is defined as either a corner of the area 22, a point on an edge of an area 22 where the edge becomes non-linear or anywhere along the edge of an area 22 that is critical for measurement. The distance or dimension 21 from the measuring and layout device 10 to the critical feature 88 is then noted and written on the stationary member 12, thereby creating the template 20. In a preferred embodiment, a paper is placed over the stationary member 12 and around the carrier 16 to record the template 20. In another preferred embodiment, the template 20 is written directly onto the stationary member 12 wherein the stationary member is erasable. The template 20 is prepared by first drawing a line 98 along a straight edge 100 of the front leg 60 of the carrier 16. The distance 21 from the measuring and layout device 10 to the critical feature 88 is then written next to the line 98 on the stationary member 12. In the illustration, the line 98 has been drawn, and the distance 21 (i.e. 175") has been written beside it. The distance 21 is measured from the critical feature 88 to a point on the tape 58, preferably determined by drawing a perpendicular mark on the line 21 aligned with and corresponding to a number on the tape 58 equal to the distance 21. The carrier 16 is then rotated again until the tape measure 18 is aligned with another critical feature 88 of the area 22 to be measured and the distance 21 is again noted and recorded on the template 20 as explained above. Notably, by extending the tape 58 to a second point in the middle or any other edge of the room and then reversing the measuring and layout device 10 end to end, additional measurements can be taken at the new location. This would allow

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someone to measure around blind corners in a room much like surveyors lay out a plot of land.

As seen in Figure 6, the measuring and layout device 10 is used to measure sheet goods 24 for placement. The measuring and layout device 10 is placed on or near the sheet goods 24. The template 20 is then read backwards to draw the configuration of the area 22 to be measured. The template 20 is read backwards by first aligning the straight edge 100 of the front leg 60 with a first one of the lines 98 written to form the template 20. The tape measure 18 is then extended to the distance 21 noted on the template 20 and a distance mark 108 is drawn on the sheet goods 24. The carrier 16 is then rotated until the next line 98 is encountered. Once again, the straight edge 100 of the front leg 60 is aligned with the next line 98 and the tape measure 18 is extended to the distance 21 noted on the template 20 and the distance mark 108 is drawn on the sheet goods 24. After all of the distances 21 noted on the template 20 have been marked on the sheet goods 24, the measuring and layout device 10 is removed from the sheet goods 24 and lines 110 are drawn between the distance marks 108 on the sheet goods 24 that were consecutively drawn on the sheet goods 24. The lines 110 connecting the consecutive distance marks 108 will have the same configuration as the area 22 to be measured. After all of the lines 110 are drawn between the distance marks 108 on the sheet goods 24, the sheet goods 24 are cut along the lines 110 thereby making the sheet good 24 with the same configuration as the area 22 to be measured. The sheet good 24 can then be placed over the area 22 to be measured and secured to the area 22 to be measured to form a cover.

The stationary member 12 with the semi-circular configuration is used to make the template 20 by first placing the straight edge 13 of the semi-circular stationary member 12 along a first edge 111 of the area 22 and is used to measure sheet goods 24 for placement. A line 102 is then drawn along the straight edge 13 of the semi-circular stationary member 12 to the end 15 of the semi-circle that was aligned with the critical feature 88'. Alternatively, the straight edge 13 is aligned with a pattern or feature on the sheet goods (such as carpet weaving or a straight edge of bulk goods). The distance mark 108 is drawn on the sheet goods 24 at the end 15 of the semi-circle. The template 20 is then read backwards as described above for

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all of the critical features 88 and the distance marks 108 are drawn on the sheet goods 24. As described above, the measuring and layout device 10 is then removed from the sheet goods 24 and lines 110 are drawn between the distance marks 108 on the sheet goods 24 that were consecutively drawn on the sheet goods 24. The sheet goods 24 are then cut along the lines 110 and placed over the area 22 to be measured and secured to the area 22 to be measured to form a cover.

The reference numeral 10a (FIG. 9) generally designates another embodiment of the present invention, having a measuring and layout device 10a, wherein the carrier 16a does not include a front leg 60. The tape 58a of the tape measure 18a is resilient and has a pair of well-defined hard edges 112. The first resilient edges 112 of the measuring and layout device 10a take the place of the straight line 100. Therefore, the lines 98a drawn on the template 20a are drawn along the resilient edges 112.

The measuring and layout device 10b could also be used when it is not connected to a stationary member 12. Therefore, the carrier 16b is placed directly on the template 20b and rotated under the center of the carrier 16b in order to make the template 20b. The template 20b is therefore preferably written on a piece of paper. A pivotable pointer 116 could also be attached to the end of the tape 58c of the tape measure 18c instead of the holder 74 to assist in making the template 20.

Fig. 16 discloses a modified method where a tape measure 181 having a longitudinally and laterally rigid tape 182 is placed angularly and randomly on a flat sheet 180. The tape measure 181 is extended and markings are placed on the flat sheet 180. The markings include a line for direction, a mark for distance, and the distance measured for showing a room 183.

#### Va. Cited Prior Art

##### U.S. Patent No. 4,344,231 to Martinez

The Martinez 4,344,231 patent discloses an area mapping apparatus. An area mapping apparatus 2, according to Martinez, is used for mapping a portion, such as a green, of a land surface area, such as a golf course. The apparatus 2 includes a measuring element 16 comprising a tape reel 36 having a tape 38 extending therefrom. The tape 38 includes an inner

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proportional measuring segment 22 having a hole 26 in an end thereof.

The apparatus 2 is used by inserting somewhat pointed legs 18 of a board 12 into the ground to secure the board 12 in place. A sheet 44 of graph paper is then inserted over a pivot leg 14 extending from the board and secured to the board 12 by thumbtacks or tape. The pivot peg 14 extending from the board 12 is inserted into the hole 26 of the area map apparatus. Once the board 12, the sheet 44 and the measuring element 16 are in position, the apparatus 2 is used by first having an assistant pointing out the tape 34 from a tape reel 36 until an edge 46 of the green is reached. The assistant then reads off a distance from a measuring scale 42 on the tape 34, where the tape 34 crosses the edge 46 of the green 4. This point is indicated in Fig. 1 by an "X" 48. This distance is transferred to the sheet 44 at the corresponding point on proportional scale 30 by the user. The measuring instrument is then indexed about the pivot peg 14 an appropriate distance and a new measurement is called out by the assistant to the user. This process is repeated as often as necessary to achieve the desired degree of resolution.

#### French Patent No. 2,614,982 to Mercier

The French Patent No. 2,614,982 to Mercier discloses a digital meter length measurer. A digital meter length measurer, according to French Patent No. 2,614,982 to Mercier, includes a casing 1 having a flexible roll-up tape 2, upon which is engraved a reflective binary code 3 corresponding to the dimension measurement to be determined. The code 3 is read by a reader and the dimensional perimeters are displayed on a digital display 10.

#### U.S. Patent No. 2,349,670 to Moxey

The Moxey 2,349,670 patent discloses a combination compass and measuring instrument. A combination compass and measuring instrument, according to Moxey, includes a housing 10 having a flexible graduated tape 12 extending therefrom. The combination compass and measuring instrument is used to draw arcs by seating a pivot pin 33 extending from the housing 10 into a surface at a desired point and exerting pressure by a finger in a seat 39 of the housing 10 to stabilize the housing 10 in an upright position. The housing 10 is then

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rotated, thereby forming an arc with a pencil 42 connected to an end of the tape 12.

U.S. Patent No. 3,269,015 to Barker

The Barker 3,269,015 patent discloses a layout instrument. A layout instrument, according to Barker, includes a lower arm 10 resting on a surface and an upper arm 11 connected to the lower arm 10. A casing 21 is connected to an upper surface of the lower arm 10 and has a retractable rule 20 extending therefrom. Likewise, a casing 28 is connected to an upper surface of the upper arm 11 and has a retractable rule 29 extending therefrom. The casing 21 including a lock pin 27 and the casing 28 includes a locking pin 30 for locking the rules 20 and 29, respectively, in an extended position. The lower arm 10 also includes a plurality of openings 35 provided therethrough. The layout instrument as disclosed by Barker is used to make arcs 40 and lines 39 with scribe pins 25, 33 or 37 by rotating the lower arm 10 or the upper arm 11 to form the arcs 40 and extending the rules 20 and 29 to form the lines 39.

U.S. Patent No. 4,835,870 to Rauch et al.

The Rauch et al. 4,835,870 patent discloses a device for measuring the distances and directions of destinations on road maps. A measuring device, according to Rauch et al., includes an angle measuring plate 10 having a bracket 11 rotatably fastened thereto. The bracket 11 carries a measuring tape case 12 having a measuring tape 19 therein which can be pulled out of the measuring tape case 12. The bracket 11 has a guide at its front end area 11c for the measuring tape 19 which is pulled out of the measuring tape case 12. The guide of the measuring tape case 19 consists of two semi-circular guides 20 which are formed laterally at the bracket 11, with the measuring tape 19 being guided through between them.

U.S. Patent No. 5,768,797 to Trevino

The Trevino 5,768,797 patent discloses a powered reel-type tape measuring device. A measuring device, according to Trevino, includes a tape housing portion 12 and a handle

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portion 14. A reversible electronic motor drives a tape 16 inwardly and outwardly from the housing 12.

U.S. Patent No. 6,115,931 to Arcand

The Arcand 6,115,931 patent discloses a tape adapter with interchangeable brackets. A tape adapter, according to Arcand, includes a tape blade 43 having an attachment 40 secured to an end thereof. The attachment 40 is configured to accept a pin attachment 100 having a pin 92 thereon. The tape measure is used with the pin attachment 100 by inserting the pin 92 into an object and pulling the tape measure housing 30 away from the object.

**Vb. The Examiner's Rejection**

Claims 17, 18 and 40-53 were rejected under 35 U.S.C. §112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps.

Claims 25, 54-56, 58, 59, 61, 62, 64 and 69 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,344,231 to Martinez.

Claims 17, 40, 42-49, 53, 60 and 63 were rejected under 35 U.S.C. §103 as being unpatentable over U.S. Patent No. 4,344,231 to Martinez.

Claims 51 and 66 were rejected under 35 U.S.C. §103 as being unpatentable over U.S. Patent No. 4,344,231 to Martinez in view of French Patent 2,614,982 to Mercier.

Claims 2-4, 7, 9, 11, 12, 14, 25, 54-56, 58, 60, 62, 63 and 65 were rejected under 35 U.S.C. §103 as being unpatentable over U.S. Patent No. 3,269,015 to Barker in view of U.S. Patent No. 2,349,670 to Moxey.

Claims 5 and 57 were rejected under 35 U.S.C. §103 as being unpatentable over U.S. Patent No. 3,269,015 to Barker in view of U.S. Patent No. 2,349,670 to Moxey and U.S. Patent No. 4,835,870 to Rauch et al.

Claims 6, 13, 30, 32, 34, 36-38 and 64 were rejected under 35 U.S.C. §103 as being unpatentable over U.S. Patent No. 3,269,015 to Barker in view of U.S. Patent No. 2,349,670 to Moxey and U.S. Patent No. 5,768,797 to Trevino.

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Claims 8, 10, 59 and 61 were rejected under 35 U.S.C. §103 as being unpatentable over U.S. Patent No. 3,269,015 to Barker in view of U.S. Patent No. 2,349,670 to Moxey and U.S. Patent No. 4,344,231 to Martinez.

Claims 15 and 66 were rejected under 35 U.S.C. §103 as being unpatentable over U.S. Patent No. 3,269,015 to Barker in view of U.S. Patent No. 2,349,670 to Moxey and French Patent 2,614,982 to Mercier.

Claims 16 and 67 were rejected under 35 U.S.C. §103 as being unpatentable over U.S. Patent No. 3,269,015 to Barker in view of U.S. Patent No. 2,349,670 to Moxey and U.S. Patent No. 6,115,931 to Arcand.

Claim 31 was rejected under 35 U.S.C. §103 as being unpatentable over U.S. Patent No. 3,269,015 to Barker in view of U.S. Patent No. 2,349,670 to Moxey, U.S. Patent No. 5,768,797 to Trevino and U.S. Patent No. 4,835,870 to Rauch et al.

Claims 33 and 35 were rejected under 35 U.S.C. §103 as being unpatentable over U.S. Patent No. 3,269,015 to Barker in view of U.S. Patent No. 2,349,670 to Moxey, U.S. Patent No. 5,768,797 to Trevino and U.S. Patent No. 4,344,231 to Martinez.

Claim 39 was rejected under 35 U.S.C. §103 as being unpatentable over U.S. Patent No. 3,269,015 to Barker in view of U.S. Patent No. 2,349,670 to Moxey, U.S. Patent No. 5,768,797 to Trevino and U.S. Patent No. 6,115,931 to Arcand.

Claims 17, 40, 43, 45, 47, 48 and 50 rejected under 35 U.S.C. §103 as being unpatentable over U.S. Patent No. 3,269,015 to Barker.

Claims 18 and 52 were rejected under 35 U.S.C. §103 as being unpatentable over U.S. Patent No. 3,269,015 to Barker in view of U.S. Patent No. 6,115,931 to Arcand.

Claim 41 was rejected under 35 U.S.C. §103 as being unpatentable over U.S. Patent No. 3,269,015 to Barker in view of U.S. Patent No. 4,835,870 to Rauch et al.

Claims 44 and 46 were rejected under 35 U.S.C. §103 as being unpatentable over U.S. Patent No. 3,269,015 to Barker in view of U.S. Patent No. 4,344,231 to Martinez.

Claim 49 was rejected under 35 U.S.C. §103 as being unpatentable over U.S. Patent No. 3,269,015 to Barker in view of U.S. Patent No. 5,768,797 to Trevino.

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Claim 51 was rejected under 35 U.S.C. §103 as being unpatentable over U.S. Patent No. 3,269,015 to Barker in view French Patent 2,614,982 to Mercier.

## VI. Issues

The issues are:

Issue 1: Whether claims 17, 18 and 40-53 are indefinite under 35 U.S.C. §112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps?

Issue 2: Whether claims 25, 54-56, 58, 59, 61, 62, 64 and 69 are anticipated by U.S. Patent No. 4,344,231 to Martinez?

Issue 3: Whether claims 17, 40, 42-49, 53, 60 and 63 are unpatentable over U.S. Patent No. 4,344,231 to Martinez?

Issue 4: Whether claims 51 and 66 are unpatentable over U.S. Patent No. 4,344,231 to Martinez in view of French Patent 2,614,982 to Mercier?

Issue 5: Whether claims 2-4, 7, 9, 11, 12, 14, 25, 54-56, 58, 60, 62, 63 and 65 are unpatentable over U.S. Patent No. 3,269,015 to Barker in view of U.S. Patent No. 2,349,670 to Moxey?

Issue 6: Whether claims 5 and 57 are unpatentable over U.S. Patent No. 3,269,015 to Barker in view of U.S. Patent No. 2,349,670 to Moxey and U.S. Patent No. 4,835,870 to Rauch et al?

Issue 7: Whether claims 6, 13, 30, 32, 34, 36-38 and 64 are unpatentable over U.S. Patent No. 3,269,015 to Barker in view of U.S. Patent No. 2,349,670 to Moxey and U.S. Patent No. 5,768,797 to Trevino?

Issue 8: Whether claims 8, 10, 59 and 61 are unpatentable over U.S. Patent No. 3,269,015 to Barker in view of U.S. Patent No. 2,349,670 to Moxey and U.S. Patent No. 4,344,231 to Martinez?

Issue 9: Whether claims 15 and 66 are unpatentable over U.S. Patent No. 3,269,015 to Barker in view of U.S. Patent No. 2,349,670 to Moxey and French Patent 2,614,982 to Mercier?

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patentably different scopes and subject matter, as shown by the reasons given in the arguments below.

Claims 2-7 and 9-15 stand or fall together (claims 9 and 12 are independent claims).

Claim 8 stands or falls alone.

Claim 16 stands or falls alone (claim 16 is an independent claim).

Claims 17, 43, 45-48, 50 and 51 stand or fall together (claim 17 is an independent claim).

Claims 18 and 52 stand or fall together.

Claims 25, 54-56, 58, 60-63, 65 and 66 stand or fall together (claim 25 is an independent claims).

Claims 30-32 and 34-38 stand or fall together (claim 30 is an independent claim).

Claim 33 stands or falls alone.

Claim 39 stands or falls alone.

Claims 40 and 42 stand or fall together.

Claim 41 stands or falls alone.

Claim 44 stands or falls alone.

Claim 45 stands or falls alone.

Claim 49 stands or falls alone.

Claim 53 stands or falls alone.

Claim 59 stands or falls alone.

Claim 60 stands or falls alone.

Claim 64 stands or falls alone.

Claim 67 stands or falls alone.

Claim 69 stands or falls alone.

## VIII. Arguments

Issue 1: Whether claims 17, 18 and 40-53 are indefinite under 35 U.S.C. §112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps?

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Issue 10: Whether claims 16 and 67 are unpatentable over U.S. Patent No. 3,269,015 to Barker in view of U.S. Patent No. 2,349,670 to Moxey and U.S. Patent No. 6,115,931 to Arcand?

Issue 11: Whether claim 31 is unpatentable over U.S. Patent No. 3,269,015 to Barker in view of U.S. Patent No. 2,349,670 to Moxey, U.S. Patent No. 5,768,797 to Trevino and U.S. Patent No. 4,835,870 to Rauch et al?

Issue 12: Whether claims 33 and 35 are unpatentable over U.S. Patent No. 3,269,015 to Barker in view of U.S. Patent No. 2,349,670 to Moxey, U.S. Patent No. 5,768,797 to Trevino and U.S. Patent No. 4,344,231 to Martinez?

Issue 13: Whether claim 39 is unpatentable over U.S. Patent No. 3,269,015 to Barker in view of U.S. Patent No. 2,349,670 to Moxey, U.S. Patent No. 5,768,797 to Trevino and U.S. Patent No. 6,115,931 to Arcand?

Issue 14: Whether claims 17, 40, 43, 45, 47, 48 and 50 are unpatentable over U.S. Patent No. 3,269,015 to Barker?

Issue 15: Whether claims 18 and 52 are unpatentable over U.S. Patent No. 3,269,015 to Barker in view of U.S. Patent No. 6,115,931 to Arcand?

Issue 16: Whether claim 41 is unpatentable over U.S. Patent No. 3,269,015 to Barker in view of U.S. Patent No. 4,835,870 to Rauch et al?

Issue 17: Whether claims 44 and 46 are unpatentable over U.S. Patent No. 3,269,015 to Barker in view of U.S. Patent No. 4,344,231 to Martinez?

Issue 18: Whether claim 49 is unpatentable over U.S. Patent No. 3,269,015 to Barker in view of U.S. Patent No. 5,768,797 to Trevino?

Issue 19: Whether claim 51 is unpatentable over U.S. Patent No. 3,269,015 to Barker in view French Patent 2,614,982 to Mercier?

## VII. Grouping of Claims

The claims are subdivided into the following groups for this appeal. The claims of each subdivided group are believed to be separately patentable since they define inventions of

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Argument: Claims 17, 18 and 40-53 are definite as written.

Discussion:

Claim 17 has been rejected under 35 U.S.C. §112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. Claims 18 and 40-53 have been rejected as depending from rejected claim 17. According to the Office Action, “[t]he omitted step is the step of connecting the tape measure to the stationary member.” Office Action mailed January 22, 2003, paragraph 2. The Office Action then states that “[t]he specification discloses that the tape measure is connected to the stationary member.” *Id.* First, while the specification does disclose that the tape measure can be connected to a stationary member, the specification also discloses various methods of positioning the tape measure relative to a stationary member. For example, the tape measure can be placed on a stationary member, but not connected thereto (see FIG. 16). Second, the Office Action makes reference to an interpretation of claim 17 as having broad language. However, “breadth of a claim is not to be equated with indefiniteness.” M.P.E.P. §2173.04. While the language in claim 17 may be broad, the proper place to address breadth of a claim is in a prior art rejection of a claim. Finally, Applicant notes that claim 40 includes “rotatably attaching a carrier to the stationary member; and connecting the tape measure to the carrier.” Therefore, claim 40 clearly includes “the step of connecting the tape measure to the stationary member.”

Accordingly, claims 17, 18 and 40-53 are definite and the Board is requested to reverse the rejection of these claims as being indefinite.

Issue 2: Whether claims 25, 54-56, 58, 59, 61, 62, 64 and 69 are anticipated by U.S. Patent No. 4,344,231 to Martinez?

Argument: In order to anticipate the invention as claimed, all elements must be found in a single reference. *Studiengesellschaft Kohle v. Dart Indus.*, 762 F.2d 724 (Fed. Cir. 1984).

Discussion:

Claim 25 defines a method of measuring and laying out an area including, among other things, providing a stationary member having a flat surface adapted to be marked on, fixedly and

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rotatably attaching an angle and distance device to the stationary member, with the angle and distance device including a longitudinally and laterally rigid extendible tape, and forming an accurate template by reliably marking on the stationary member as the angle and distance device is rotated and the tape is extended and retracted to critical features of the area.

The prior art of record does not disclose or suggest the above noted features of claim 25. Specifically, the Martinez '231 patent does not disclose an angle and distance device fixedly and rotatably attached to a stationary member. The Martinez '231 patent discloses a measuring element 16 including an inner proportional measuring segment 22 having a hole 26 in an end thereof. A pivot peg 14 extends from a board 12 and the pivot peg 14 is inserted into the hole 26 during use of the area mapping apparatus. However, the inner proportional measuring segment 22 is not fixedly and rotatably attached to the pivot peg 14 or the board 12. The inner proportional measuring segment 34 can easily be slipped off the pivot peg 14 without applying any force to the pivot peg 14 or the board 12. Therefore, the Martinez '231 patent does not anticipate claim 25. Furthermore, claims 54-67 depend from claim 25, and since claim 25 defines unobvious patentable subject matter, claims 54-67 define patentable subject matter. Accordingly, claims 25 and 54-67 are in condition for allowance.

In addition to the reasons for allowance noted above, claim 64 further defines the method of measuring and laying out as including providing the angle and distance device with a tape extender for mechanically extending the tape and extending the tape with the tape extender. The prior art of record does not disclose or suggest the above features of claim 64. According to the Office Action, the Martinez '231 patent discloses "a tape measure extender (handle on 36) for mechanically extending the tape." Office Action mailed January 22, 2003, paragraph 4. The Office Action then states that "in utilizing the device disclosed by Martinez to measure and lay out an area, the method steps of claims 25, 54-56, 58, 59, 61, 62, 64, and 69 would inherently be followed." *Id.*

The Martinez '231 patent does not anticipate claim 64. First, claim 64 depends from claim 25, and since claim 25 defines patentable subject matter as discussed above, claim 64 defines patent subject matter. Second, "[t]he fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or

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characteristic." M.P.E.P. § 2112; *In re Rijchaert*, 28 U.S.P.Q.2d 1955, 1957 (Fed. Cir. 1993). "In relying upon the theory of inherency, the Examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. and Inter. 1990) (emphasis original). The Martinez '231 patent does not necessarily disclose extending tape with a tape extender. In fact, the area mapping apparatus as disclosed in the Martinez '231 patent would only be used by inserting the legs 18 into a green and pulling the tape reel 36 to the appropriate location. The area mapping apparatus as disclosed in the Martinez '231 patent would not be used by extending the tape 38, and therefore the board 12 and legs 18, from the tape reel 35 as the tape reel 35 remained stationary. Accordingly, the Martinez '231 patent does not anticipate claim 64.

Claim 69 defines a method of measuring and laying out an area including, among other things, providing a stationary member, rotatably coupling an angle and distance device to the stationary member, with the angle and distance device including a longitudinally and laterally rigid extendable tape that can be extended from a central point, and forming an accurate template as the angle and distance device is rotated and the tape is extended and retracted to a plurality of critical features of the area, wherein the step of forming an accurate template includes recording a distance of the tape from the stationary member to each of the plurality of critical features and recording angle information for each distance recording signifying an angle of the tape relative to the stationary member during each distance recording and wherein the stationary member remains stationary during at least two distance and angle information recordings.

The prior art of record does not disclose or suggest the above noted features of claim 69. Specifically, the Martinez '231 patent does not disclose recording a distance of the tape from the stationary member to each of a plurality of critical features and recording angle information for each distance recording signifying an angle of the tape relative to the stationary member during each distance recording. The Martinez '231 patent discloses that the area mapping apparatus is used in the following manner:

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The user places the board 12 on green 4 in a suitable location. . . An assistant then pays out tape 34 from tape reel 36 until the edge 46 of green 4 is reached. Pulling measuring instrument somewhat taut, to assure an accurate reading in distance and rotary position, the assistant reads off the distance from measuring scale 42 on tape 34 where the tape crosses the edge 46 of the green. This point is indicated in FIG. 1 by an "x" 48. This distance is transferred to sheet 44 at the corresponding point on proportional scale 30 by the user. Measuring instrument is then indexed about pivot peg 14 an appropriate distance and a new measurement is called out by the assistant to the user. This process is repeated as often as necessary to achieve the desired degree of resolution.

Lines 57-58 and 76-68 of column 2 and lines 1-13 of column 3. While the Martinez '231 patent discloses reading off the distance from the measuring scale 42 on the tape 34 and transferring the distance to the sheet 44 at the corresponding point on the proportional scale 30, the Martinez '231 patent does not disclose recording angle information for each distance recording signifying an angle of the tape relative to the stationary member during each distance recording. Therefore, the Martinez '231 patent does not disclose recording both a distance and angle information.

Accordingly, claim 69 is in condition for allowance.

Accordingly, claims 25, 54-67 and 69 are allowable over the Martinez '231 patent, and the Board is requested to reverse the rejection of these claims.

Issue 3: Whether claims 17, 40, 42-49, 53, 60 and 63 are unpatentable over U.S. Patent No. 4,344,231 to Martinez?

Argument: In order to establish a *prima facie* case of obviousness, three criteria must be met. M.P.E.P. §706.02(j). Firstly, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *In re Fine*, 5 U.S.P.Q.2d 1586 (Fed. Cir. 1988). Secondly, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Thirdly, the prior art reference (or references) must teach or suggest all the claim limitations. *In re Royka*, 180 U.S.P.Q. 550 (C.C.P.A. 1974). The burden is on the Examiner to create a *prima facie* case of obviousness, not on the Applicant to provide reasons for patentability. See *In re Fine*, 5 U.S.P.Q.2d 1596 (Fed. Cir.

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1988). The Examiner has not created a *prima facie* case of obviousness to reject claims 17, 40, 42-49, 53, 60 and 63 over the Martinez '231 patent.

Discussion:

Claim 17 defines a method of measuring and laying out a template of a room including, among other things, providing a stationary member, providing a tape measure, extending the tape measure to a critical feature of an area in a room to be measured and recording direction and distance information on the stationary member from the tape measure relating to the critical feature. The prior art of record does not disclose or suggest the above noted features of claim 17.

In regard to the first criterion of obviousness, there is no suggestion or motivation, either in the reference itself or in the knowledge generally available to one of ordinary skill in the art, to modify the reference. According to the Office Action, the Martinez '231 patent does not disclose a method of measuring and laying out a room, but the Martinez '231 patent "teaches that his layout device can be used to layout a surface area, i.e., any surface area" and that "it would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize the Martinez device to layout the surface area within a room since a room has a surface area and Martinez discloses that his device can be used to layout any surface area." Office Action mailed January 22, 2003, paragraph 8. First, the mere fact that an object could be used in a method is not by itself sufficient to support a finding of obviousness. The prior art must provide a motivational reason for the worker in the art, without the benefit of Applicant's specification, to make the necessary changes in the reference device. See *Ex parte Chicago Rawhide Mfg. Co.*, 223 USPQ 351, 353 (Bd. Pat. App. & Inter. 1984). Applicant submits that the Examiner has not provided any such motivation. Second, the Martinez '231 patent discloses that the area mapping apparatus is used for mapping an outside land surface area. See lines 26-31 of column 1. Because the area mapping apparatus of the Martinez '231 patent is used outdoors, the area mapping apparatus includes legs 18 "that are somewhat pointed so that board 12 is securely positioned" in its proper location in the ground. Lines 62-64 of column 2. The Martinez '231 patent does not teach using the area mapping apparatus

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indoors. Furthermore, the long pointed legs 18 of the board teach against any method of using the area mapping apparatus indoors and in a room because the long pointed legs 18 of the board would penetrate a floor in a room during use of the area mapping apparatus as disclosed by the Martinez '231 patent if the area mapping apparatus was used indoors. Accordingly, there is no suggestion or motivation, either in the reference itself or in the knowledge generally available to one of ordinary skill in the art, to modify the reference. Therefore, claim 17 is in condition for allowance over the Martinez '231 patent.

In regard to the third criterion of obviousness, the prior art of record does not disclose or suggest the above noted features of claim 17. Specifically, the Martinez '231 patent alone or as modified does not disclose recording direction information on a stationary member. As discussed above regarding claim 69, while the Martinez '231 patent may disclose recording distance information, the Martinez '231 patent does not disclose recording both direction and distance information. Accordingly, claim 17 is in condition for allowance over the Martinez '231 patent.

Furthermore, claims 18 and 40-53 depend from claim 17, and since claim 17 is allowable over the Martinez '231 patent, claims 18 and 40-53 are allowable over the Martinez '231 patent.

Moreover, in regard to claim 40, the Martinez '231 patent does not disclose rotatably attaching a carrier to the stationary member and connecting the tape measure to the carrier. First, claim 40 depends from claim 17, and since claim 17 defines patentable subject matter as discussed above, claim 40 defines patent subject matter. Second, the Martinez '231 patent does not disclose a carrier attached to a stationary member. As discussed above regarding claim 25, the Martinez '231 patent discloses a measuring element 16 including an inner proportional measuring segment 22 having a hole 26 in an end thereof. A pivot peg 14 extends from a board 12 and the pivot peg 14 is inserted into the hole 26 during use of the area mapping apparatus. However, the inner proportional measuring segment 22 is not rotatably attached to the pivot peg 14 or the board 12. The inner proportional measuring segment 34 can easily be slipped off the pivot peg 14 without applying any force to the pivot peg 14 or the board 12. Therefore, claim 40 is patentable over the Martinez '231 patent. Furthermore, claims 41 and 42 depend from

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claim 40, and since claim 40 defines unobvious patentable subject matter, claims 41 and 42 define patentable subject matter. Accordingly, claims 40-42 are in condition for allowance.

In regard to claim 49, the prior art of record does not disclose or suggest providing a tape measure extender for mechanically extending the tape measure and extending the tape measure with the tape measure extender. First, claim 49 depends from claim 17, and since claim 17 defines patentable subject matter as discussed above, claim 49 defines patent subject matter. Second, as discussed above regarding claim 64, the Martinez '231 patent does not disclose extending tape with a tape extender. Accordingly, claim 49 is in condition for allowance.

In regard to claim 53, the prior art of record does not disclose writing angle information on the stationary member signifying an angle of tape measure relative to the stationary member. First, claim 53 depends from claim 17, and since claim 17 defines patentable subject matter as discussed above, claim 53 defines patentable subject matter. Second, the Martinez '231 patent does not disclose writing a distance of the tape measure from the stationary member to the critical feature on the stationary member and writing angle information on the stationary member signifying an angle of the tape measure relative to the stationary member. As discussed above regarding claim 69, while the Martinez '231 patent discloses reading off the distance from the measuring scale 42 on the tape 34 and transferring the distance to the sheet 44 at the corresponding point on the proportional scale 30, the Martinez '231 patent does not disclose writing angle information on the stationary member signifying an angle of the tape measure relative to the stationary member. The Martinez '231 patent does not disclose recording both a distance and angle information. Accordingly, claim 53 is in condition for allowance.

Accordingly, claims 17, 18, 40-53, 60 and 63 are allowable over the Martinez '231 patent, and the Board is requested to reverse the rejection of these claims.

Issue 4: Whether claims 51 and 66 are unpatentable over U.S. Patent No. 4,344,231 to Martinez in view of French Patent 2,614,982 to Mercier?

Argument: In order to establish a *prima facie* case of obviousness, three criteria must be met. M.P.E.P. §706.02(j). Firstly, there must be some suggestion or motivation, either in

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the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *In re Fine*, 5 U.S.P.Q.2d 1586 (Fed. Cir. 1988). Secondly, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Thirdly, the prior art reference (or references) must teach or suggest all the claim limitations. *In re Royka*, 180 U.S.P.Q. 550 (C.C.P.A. 1974). The burden is on the Examiner to create a *prima facie* case of obviousness, not on the Applicant to provide reasons for patentability. See *In re Fine*, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). The Examiner has not created a *prima facie* case of obviousness to reject claims 60 and 63 over the Martinez '231 patent in view of French Patent 2,614,982 to Mercier.

Discussion:

Claims 51 and 66 depend from claims 17 and 25, respectively, and since claims 17 and 25 define patentable subject matter as discussed above, claims 51 and 66 define patentable subject matter.

Accordingly, claims 51 and 66 are allowable over the Martinez '231 patent in view of French Patent 2,614,982 to Mercier, and the Board is requested to reverse the rejection of these claims.

Issue 5: Whether claims 2-4, 7, 9, 11, 12, 14, 25, 54-56, 58, 60, 62, 63 and 65 are unpatentable over U.S. Patent No. 3,269,015 to Barker in view of U.S. Patent No. 2,349,670 to Moxey?

Argument: In order to establish a *prima facie* case of obviousness, three criteria must be met. M.P.E.P. §706.02(j). Firstly, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *In re Fine*, 5 U.S.P.Q.2d 1586 (Fed. Cir. 1988). Secondly, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Thirdly, the prior art reference (or references) must teach or suggest all the claim limitations. *In re Royka*, 180 U.S.P.Q. 550 (C.C.P.A. 1974). The burden is on the Examiner to create a *prima facie* case of obviousness, not on the Applicant to provide reasons for patentability. See *In re Fine*, 5 U.S.P.Q.2d 1596 (Fed. Cir.

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1988). The Examiner has not created a *prima facie* case of obviousness to reject claims 2-4, 7, 9, 11, 12, 14, 25, 54-56, 58, 60, 62, 63 and 65 over the Barker '015 patent in view of the Moxey '670 patent.

Discussion:

Claim 9 defines a measuring and layout device including, among other things, a stationary member and an angle and distance device fixedly and rotatably attached to the stationary member, the angle and distance device including a longitudinally and laterally rigid extendible tape that can be extended from a central point and an edge that facilitates reliably marking on the stationary member to form an accurate template, wherein the template is formed by markings written directly onto the stationary member. The prior art of record does not disclose or suggest the above noted features of claim 9.

In regard to the third criterion of obviousness, the prior art of record does not disclose or suggest the claim limitations of claim 9. Specifically, neither the Barker '015 patent nor the Moxey '670 patent disclose an angle and distance device fixedly and rotatably attached to a stationary member. According to the Office Action, the Moxey '670 patent discloses a layout device that "utilizes means (33) to fasten the device to the stationary member" and "it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the angle and distance device disclosed by Barker by adding means for fixedly and rotatably attaching the device to the stationary member, as disclosed by Moxey, in order to fasten the device to the stationary member and thereby obtain a more accurate layout." Office Action mailed January 22, 2003, paragraph 10. However, the Moxey '670 patent does not disclose "means for fixedly and rotatably attaching the device to the stationary member." The Moxey '670 patent discloses a housing 10 having an "embossment 30, which is slotted vertically at two opposite sides, as indicated at 31, to constitute a chuck for a pivot pin 33." Lines 44-48 of column 1 of page 2. During use, the pivot pin 33 is "seated in the surface at the desired point." Lines 2-4 of column 1 of page 3. However, seating the pivot pin 33 in the surface as disclosed by the Moxey '670 patent does not fixedly and rotatably attach the housing 10 to the surface. Therefore, any combination of the Barker '015 patent and the Moxey '670 patent would not result in an angle and distance device fixedly and rotatably

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attached to a stationary member. Accordingly, claim 9 is in condition for allowance. Furthermore, claim 11 depends from claim 9, and since claim 9 defines unobvious patentable subject matter, claim 11 defines unobvious patentable subject matter. Accordingly, claims 9 and 11 are in condition for allowance.

Claim 12 defines a measuring and layout device including, among other things, a stationary member and an angle and distance device fixedly and rotatably attached to the stationary member, the angle and distance device including a longitudinally and laterally rigid extendible tape that can be extended from a central point and an edge that facilitates reliably marking on the stationary member to form an accurate template, wherein the stationary member has a substantially semi-circular configuration. The prior art of record does not disclose or suggest the above noted features of claim 12.

In regard to the third criterion of obviousness, the prior art of record does not disclose or suggest the claim limitations of claim 12. As stated above regarding claim 9, any combination of the Barker '015 patent and the Moxey '670 patent would not result in an angle and distance device fixedly and rotatably attached to a stationary member. Accordingly, claim 12 is in condition for allowance. Furthermore, claims 2-8, 10 and 13-15 depend from claim 12, and since claim 12 defines unobvious patentable subject matter, claims 2-8, 10 and 13-15 define unobvious patentable subject matter. Accordingly, claims 2-8, 10 and 12-15 are in condition for allowance.

Claim 25 defines a method of measuring and laying out area including, among other things, providing a stationary member having a flat surface adapted to be marked on, fixedly and rotatably attaching an angle and distance device to the stationary member, the angle and distance device including a longitudinally and laterally rigid extendible tape, and forming an accurate template by reliably marking on the stationary member as the angle and distance device is rotated and the tape is extended and retracted to critical features of the area. The prior art of record does not disclose or suggest the above noted features of claim 25.

In regard to the third criterion of obviousness, the prior art of record does not disclose or suggest the claim limitations of claim 25. As stated above regarding claim 9, any combination of the Barker '015 patent and the Moxey '670 patent would not result in an angle

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and distance device fixedly and rotatably attached to a stationary member. Accordingly, claim 25 is in condition for allowance. Furthermore, claims 54-67 depend from claim 25, and since claim 25 defines unobvious patentable subject matter, claims 54-67 define unobvious patentable subject matter. Accordingly, claims 25 and 54-67 are in condition for allowance.

Accordingly, claims 2-15, 25 and 54-67 are allowable over the Barker '015 patent in view of the Moxey '670 patent, and the Board is requested to reverse the rejection of these claims.

Issue 6: Whether claims 5 and 57 are unpatentable over U.S. Patent No. 3,269,015 to Barker in view of U.S. Patent No. 2,349,670 to Moxey and U.S. Patent No. 4,835,870 to Rauch et al?

Argument: In order to establish a *prima facie* case of obviousness, three criteria must be met. M.P.E.P. §706.02(j). Firstly, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *In re Fine*, 5 U.S.P.Q.2d 1586 (Fed. Cir. 1988). Secondly, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Thirdly, the prior art reference (or references) must teach or suggest all the claim limitations. *In re Royka*, 180 U.S.P.Q. 550 (C.C.P.A. 1974). The burden is on the Examiner to create a *prima facie* case of obviousness, not on the Applicant to provide reasons for patentability. See *In re Fine*, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). The Examiner has not created a *prima facie* case of obviousness to reject claims 5 and 57 over the Barker '015 patent in view of the Moxey '670 patent and the Rauch et al. '870 patent.

Discussion:

Claim 5 defines the measuring and layout device as including a carrier having a front leg adjacent a top of the stationary member, with the front leg having guides for the tape and a straight edge for making the template. Claim 5 depends from claim 12, and since claim 12 defines patentable subject matter as discussed above, claim 5 defines patent subject matter. Accordingly, claim 5 is in condition for allowance.

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Claim 57 further defines the method of measuring and laying out of claims 56, 55, 54 and 25 by stating that a carrier is pivotally coupled to the stationary member, that the carrier includes a front leg adjacent a top of the stationary member, that the front leg has guides for the tape measure and a straight edge, and that the step of forming a template includes making a mark along the straight edge of the front leg.

The prior art of record does not disclose or suggest the claimed features of claim 57. First, claim 57 depends from claim 25, and since claim 25 defines patentable subject matter as discussed above, claim 57 defines patentable subject matter. Second, the prior art references do not teach or suggest all the claim limitations. According to the Office Action, “in utilizing the device disclosed by Barker, Moxey, and Rauch to measure and lay out an area, the method steps of claim 57 would inherently be followed.” Office Action mailed January 22, 2003, paragraph 11. However, neither the Barker ‘015 patent, the Moxey ‘670 patent nor the Rauch et al. ‘870 patent disclose making a mark along a straight edge of a front leg of a carrier. Furthermore, “[t]he fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic.” M.P.E.P. § 2112; *In re Rijchaert*, 28 U.S.P.Q.2d 1955, 1957 (Fed. Cir. 1993). “In relying upon the theory of inherency, the Examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.” *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. and Inter. 1990) (emphasis original). A method of measuring and laying out an area including the step of making a mark along a straight edge of a front leg of a carrier is not necessarily disclosed in the Barker ‘015 patent, the Moxey ‘670 patent or the Rauch et al. ‘870 patent. Accordingly, claim 57 is in condition for allowance.

Accordingly, claims 5 and 57 are allowable over the Barker ‘015 patent in view of the Moxey ‘670 patent and the Rauch et al. ‘870 patent, and the Board is requested to reverse the rejection of these claims.

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Issue 7: Whether claims 6, 13, 30, 32, 34, 36-38 and 64 are unpatentable over U.S. Patent No. 3,269,015 to Barker in view of U.S. Patent No. 2,349,670 to Moxey and U.S. Patent No. 5,768,797 to Trevino?

Argument: In order to establish a *prima facie* case of obviousness, three criteria must be met. M.P.E.P. §706.02(j). Firstly, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *In re Fine*, 5 U.S.P.Q.2d 1586 (Fed. Cir. 1988). Secondly, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Thirdly, the prior art reference (or references) must teach or suggest all the claim limitations. *In re Royka*, 180 U.S.P.Q. 550 (C.C.P.A. 1974). The burden is on the Examiner to create a *prima facie* case of obviousness, not on the Applicant to provide reasons for patentability. See *In re Fine*, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). The Examiner has not created a *prima facie* case of obviousness to reject claims 6, 13, 30, 32, 34, 36-38 and 64 over the Barker '015 patent in view of the Moxey '670 patent and the Trevino '797 patent.

Discussion:

Claim 6, 13 and 64 depend from claims 12 and 25, and since claims 12 and 25 define patentable subject matter as discussed above, claims 6, 13 and 64 define patent subject matter. Accordingly, claims 6, 13 and 64 are in condition for allowance.

Claim 30 defines a measuring and layout device including, among other things, a stationary member, a carrier fixedly and rotatably attached to the stationary member and an extendible tape connected to the carrier, the tape being configured to extend from the carrier and including an edge that facilitates reliably marking on the stationary member to form an accurate template. The prior art of record does not disclose or suggest the above noted features of claim 30.

In regard to the third criterion of obviousness, the prior art of record does not disclose or suggest the claim limitations of claim 30. Specifically, neither the Barker '015 patent, the Moxey '670 patent nor the Trevino '797 patent disclose a carrier fixedly and rotatably attached to a stationary member. According to the Office Action, the Moxey '670 patent discloses a

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layout device that "utilizes means (33) to fasten the device to the stationary member" and "it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the angle and distance device disclosed by Barker by adding means for fixedly and rotatably attaching the device to the stationary member, as disclosed by Moxey, in order to fasten the device to the stationary member and thereby obtain a more accurate layout."

Office Action mailed January 22, 2003, paragraph 17. However, the Moxey '670 patent does not disclose "means for fixedly and rotatably attaching the device to the stationary member." The Moxey '670 patent discloses a housing 10 having an "embossment 30, which is slotted vertically at two opposite sides, as indicated at 31, to constitute a chuck for a pivot pin 33." Lines 44-48 of column 1 of page 2. During use, the pivot pin 33 is "seated in the surface at the desired point." Lines 2-4 of column 1 of page 3. However, seating the pivot pin 33 in the surface as disclosed by the Moxey '670 patent does not fixedly and rotatably attach the housing 10 to the surface. Therefore, any combination of the Barker '015 patent and the Moxey '670 patent would not result in a carrier fixedly and rotatably attached to a stationary member. Accordingly, claim 30 is in condition for allowance. Furthermore, claims 31-39 depend from claim 30, and since claim 30 defines unobvious patentable subject matter, claims 31-39 define unobvious patentable subject matter. Accordingly, claims 30-39 are in condition for allowance.

Accordingly, claims 6, 13, 30-39 and 64 are allowable over the Barker '015 patent in view of the Moxey '670 patent and the Trevino '797 patent, and the Board is requested to reverse the rejection of these claims.

Issue 8: Whether claims 8, 10, 59 and 61 are unpatentable over U.S. Patent No. 3,269,015 to Barker in view of U.S. Patent No. 2,349,670 to Moxey and U.S. Patent No. 4,344,231 to Martinez?

Argument: In order to establish a *prima facie* case of obviousness, three criteria must be met. M.P.E.P. §706.02(j). Firstly, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *In re Fine*, 5 U.S.P.Q.2d 1586

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(Fed. Cir. 1988). Secondly, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Thirdly, the prior art reference (or references) must teach or suggest all the claim limitations. *In re Royka*, 180 U.S.P.Q. 550 (C.C.P.A. 1974). The burden is on the Examiner to create a prima facie case of obviousness, not on the Applicant to provide reasons for patentability. See *In re Fine*, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). The Examiner has not created a prima facie case of obviousness to reject claims 8, 10, 59 and 61 over the Barker '015 patent in view of the Moxey '670 patent and the Martinez '231 patent.

Discussion:

Claims 8, 10, 59 and 61 depend from claims 12 and 25, and since claims 12 and 25 define patentable subject matter as discussed above, claims 8, 10, 59 and 61 define patent subject matter. Accordingly, claims 8, 10, 59 and 61 are in condition for allowance.

Furthermore, in regard to claims 8 and 59, there is no suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to combine the reference teachings. Claim 8 defines the measuring and layout device as including a board having non-slip feet. Claim 59 defines the method of measuring and laying out as including a board having non-slip feet. According to the Office Action, the Martinez '231 patent includes "a stationary member (12) with non-slip feet (18)" and that "[i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Barker and Moxey by adding non-slip feet . . . in order to prevent the stationary member from moving when the tape is being retracted or extended from the tape measure." Office Action mailed January 22, 2003, paragraph 13. However, the Martinez '231 patent discloses a board 12 having legs 18 being somewhat pointed so that the board 12 can be securely positioned on a green 4. Neither the Barker '015 patent nor the Moxey '670 patent disclose their instruments as being used on a green and there is no reason or suggestion to use the instruments as disclosed by the Barker '015 patent or the Moxey '670 patent on a green. Therefore, there is no suggestion or motivation for adding legs 18 to the instruments as disclosed by the Barker '015 patent and the Moxey '670 patent because the legs would never

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be used as disclosed by the Martinez '231 patent. Accordingly, claims 8 and 59 are in condition for allowance.

Accordingly, claims 8, 10, 59 and 61 are allowable over the Barker '015 patent in view of the Moxey '670 patent and the Martinez '231 patent, and the Board is requested to reverse the rejection of these claims.

Issue 9: Whether claims 15 and 66 are unpatentable over U.S. Patent No. 3,269,015 to Barker in view of U.S. Patent No. 2,349,670 to Moxey and French Patent 2,614,982 to Mercier?

Argument: In order to establish a *prima facie* case of obviousness, three criteria must be met. M.P.E.P. §706.02(j). Firstly, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *In re Fine*, 5 U.S.P.Q.2d 1586 (Fed. Cir. 1988). Secondly, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Thirdly, the prior art reference (or references) must teach or suggest all the claim limitations. *In re Royka*, 180 U.S.P.Q. 550 (C.C.P.A. 1974). The burden is on the Examiner to create a *prima facie* case of obviousness, not on the Applicant to provide reasons for patentability. See *In re Fine*, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). The Examiner has not created a *prima facie* case of obviousness to reject claims 15 and 66 over the Barker '015 patent in view of the Moxey '670 patent and the French Patent 2,614,982 to Mercier.

Discussion:

Claims 15 and 66 depend from claims 12 and 25, respectfully, and since claims 12 and 25 define patentable subject matter as discussed above, claims 15 and 66 define patent subject matter. Accordingly, claims 15 and 66 are in condition for allowance.

Accordingly, claims 15 and 66 are allowable over the Barker '015 patent in view of the Moxey '670 patent and the French Patent 2,614,982 to Mercier, and the Board is requested to reverse the rejection of these claims.

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Issue 10: Whether claims 16 and 67 are unpatentable over U.S. Patent No. 3,269,015 to Barker in view of U.S. Patent No. 2,349,670 to Moxey and U.S. Patent No. 6,115,931 to Arcand?

Argument: In order to establish a *prima facie* case of obviousness, three criteria must be met. M.P.E.P. §706.02(j). Firstly, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *In re Fine*, 5 U.S.P.Q.2d 1586 (Fed. Cir. 1988). Secondly, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Thirdly, the prior art reference (or references) must teach or suggest all the claim limitations. *In re Royka*, 180 U.S.P.Q. 550 (C.C.P.A. 1974). The burden is on the Examiner to create a *prima facie* case of obviousness, not on the Applicant to provide reasons for patentability. See *In re Fine*, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). The Examiner has not created a *prima facie* case of obviousness to reject claims 16 and 67 over the Barker '015 patent in view of the Moxey '670 patent and the Arcand '931 patent.

Discussion:

Claim 16 defines a measuring and layout device including, among other things, a stationary member and an angle and distance device fixedly and rotatably attached to the stationary member, the angle and distance device including a longitudinally and laterally rigid extendible tape that can be extended from a central point and an edge that facilitates reliably marking on the stationary member to form an accurate template, wherein the tape has a pivotal pointer and a distal end. The prior art of record does not disclose or suggest the above noted features of claim 16.

In regard to the first criterion of obviousness, there is no suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to combine the reference teachings. According to the Office Action, the Arcand '931 patent includes "a pivotal pointer (100) at a distal end of the tape" and that "[i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Barker by adding a pivotal pointer at the distal end of the tape, as

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disclosed by Arcand, in order to allow a single person to take measurements by securely attaching the distal end onto a surface and thus securing the tape in an extended position when marking the stationary member." Office Action mailed January 22, 2003, paragraph 16. However, there is no suggestion or motivation for adding the pin 92 of the pin attachment 100 disclosed in the Arcand '931 patent to the instruments disclosed by the Barker '015 patent, the Moxey '670 patent or a combination thereof.

The Arcand '931 patent discloses a tape measure including a tape blade 43 having an attachment 40 secured to an end thereof. The attachment 40 is configured to accept a pin attachment 100 having a pin 92 thereon. The tape measure is used with the pin attachment 100 by inserting the pin 92 into an object and pulling a tape measure housing 30 away from the object. In this situation, the end of the tape blade 43 is fixed relative to the housing.

Therefore, if the pin attachment 100 with the pin 92 as disclosed by the Arcand '931 patent was added to the rule 20 disclosed by the Barker '015 patent, the tape 12 of the Moxey '670 patent or a combination thereof, the instruments as disclosed by the Barker '015 patent, the Moxey '670 patent or a combination thereof could not be rotated to form an arc or a line on a surface because the tape or rule could not rotate or be extended relative to the surface. Furthermore, the Barker '015 patent has lock pins 27 and 30 and the Moxey '670 patent has a clamping screw 26 for securing the rule 20 and the tape 12, respectively, in an extended position. Therefore, modifying the teachings of the Barker '015 patent and the Moxey '670 patent as set forth in the Office Action would not provide any advantage not already provided by the disclosed instruments. Accordingly, there is no suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to combine the reference teachings:

Furthermore, in regard to the third criterion of obviousness, the prior art of record does not disclose or suggest the above noted features of claim 16. Specifically, neither the Barker '015 patent, the Moxey '670 patent nor the Arcand '931 patent disclose an angle and distance device fixedly and rotatably attached to a stationary member. According to the Office Action, the Moxey '670 patent discloses a layout device that "utilizes means (33) to fasten the device to the stationary member" and "it would have been obvious to one having ordinary skill

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in the art at the time the invention was made to modify the angle and distance device disclosed by Barker by adding means for fixedly and rotatably attaching the device to the stationary member, as disclosed by Moxey, in order to fasten the device to the stationary member and thereby obtain a more accurate layout." Office Action mailed January 22, 2003, paragraph 16. However, the Moxey '670 patent does not disclose "means for fixedly and rotatably attaching the device to the stationary member." The Moxey '670 patent discloses a housing 10 having an "embossment 30, which is slotted vertically at two opposite sides, as indicated at 31, to constitute a chuck for a pivot pin 33." Lines 44-48 of column 1 of page 2. During use, the pivot pin 33 is "seated in the surface at the desired point." Lines 2-4 of column 1 of page 3. However, seating the pivot pin 33 in the surface as disclosed by the Moxey '670 patent does not fixedly and rotatably attach the housing 10 to the surface. Therefore, any combination of the Barker '015 patent, the Moxey '670 patent and the Arcand '931 patent would not result in a carrier fixedly and rotatably attached to a stationary member.

Accordingly, claim 16 is in condition for allowance.

Claim 67 depends from claim 25, and since claim 25 defines patentable subject matter as discussed above, claim 67 defines patentable subject matter. Furthermore, claim 67 further defines the method of measuring and laying out as including connecting a pivotal pointer to a distal end of the tape. As discussed above regarding claim 16, there is no suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to add the pin attachment 100 of the Arcand '931 patent to the Barker '015 patent, the Moxey '670 patent or a combination thereof. Accordingly, claim 67 is in condition for allowance.

Accordingly, claims 16 and 67 are allowable over the Barker '015 patent in view of the Moxey '670 patent and the Arcand '931 patent, and the Board is requested to reverse the rejection of these claims.

Issue 11: Whether claim 31 is unpatentable over U.S. Patent No. 3,269,015 to Barker in view of U.S. Patent No. 2,349,670 to Moxey, U.S. Patent No. 5,768,797 to Trevino and U.S. Patent No. 4,835,870 to Rauch et al?

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Argument: In order to establish a *prima facie* case of obviousness, three criteria must be met. M.P.E.P. §706.02(j). Firstly, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *In re Fine*, 5 U.S.P.Q.2d 1586 (Fed. Cir. 1988). Secondly, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Thirdly, the prior art reference (or references) must teach or suggest all the claim limitations. *In re Royka*, 180 U.S.P.Q. 550 (C.C.P.A. 1974). The burden is on the Examiner to create a *prima facie* case of obviousness, not on the Applicant to provide reasons for patentability. See *In re Fine*, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). The Examiner has not created a *prima facie* case of obviousness to reject claim 31 over the Barker '015 patent in view of the Moxey '670 patent, the Trevino '797 patent and the Rauch et al. '870 patent.

Discussion:

Claim 31 depends from claim 30, and since claim 30 defines patentable subject matter as discussed above, claim 31 defines patent subject matter. Accordingly, claim 31 is in condition for allowance.

Accordingly, claim 31 is allowable over the Barker '015 patent in view of the Moxey '670 patent, the Trevino '797 patent and the Rauch et al. '870 patent, and the Board is requested to reverse the rejection of these claims.

Issue 12: Whether claims 33 and 35 are unpatentable over U.S. Patent No. 3,269,015 to Barker in view of U.S. Patent No. 2,349,670 to Moxey, U.S. Patent No. 5,768,797 to Trevino and U.S. Patent No. 4,344,231 to Martinez?

Argument: In order to establish a *prima facie* case of obviousness, three criteria must be met. M.P.E.P. §706.02(j). Firstly, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *In re Fine*, 5 U.S.P.Q.2d 1586 (Fed. Cir. 1988). Secondly, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Thirdly, the prior art reference (or references)

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must teach or suggest all the claim limitations. *In re Royka*, 180 U.S.P.Q. 550 (C.C.P.A. 1974). The burden is on the Examiner to create a prima facie case of obviousness, not on the Applicant to provide reasons for patentability. See *In re Fine*, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). The Examiner has not created a prima facie case of obviousness to reject claims 33 and 35 over the Barker '015 patent in view of the Moxey '670 patent, the Trevino '797 patent and the Martinez '231 patent.

Discussion:

Claims 33 and 35 depend from claim 30, and since claim 30 defines patentable subject matter as discussed above, claims 33 and 35 define patent subject matter. Accordingly, claims 33 and 35 are in condition for allowance.

Furthermore, in regard to claim 33, there is no suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to combine the reference teachings. Claim 33 defines the measuring and layout device as including a board having non-slip feet. According to the Office Action, the Martinez '231 patent includes "a stationary member (12) with non-slip feet (18)" and that "[i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Barker and Moxey by adding non-slip feet . . . in order to prevent the stationary member from moving when the tape is being retracted or extended from the tape measure." Office Action mailed January 22, 2003, paragraph 19. However, the Martinez '231 patent discloses a board 12 having legs 18 being somewhat pointed so that the board 12 can be securely positioned on a green 4. Neither the Barker '015 patent, the Moxey '670 patent nor the Trevino '797 patent disclose their instruments as being used on a green and there is no reason or suggestion to use the instruments as disclosed by the Barker '015 patent, the Moxey '670 patent or the Trevino '797 patent on a green. Therefore, there is no suggestion or motivation for adding legs 18 to the instruments as disclosed by the Barker '015 patent, the Moxey '670 patent and the Trevino '797 patent because the legs would never be used as disclosed by the Martinez '231 patent. Accordingly, claim 33 is in condition for allowance.

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Accordingly, claims 33 and 35 are allowable over the Barker '015 patent in view of the Moxey '670 patent, the Trevino '797 patent and the Martinez '231 patent, and the Board is requested to reverse the rejection of these claims.

Issue 13: Whether claim 39 is unpatentable over U.S. Patent No. 3,269,015 to Barker in view of U.S. Patent No. 2,349,670 to Moxey, U.S. Patent No. 5,768,797 to Trevino and U.S. Patent No. 6,115,931 to Arcand?

Argument: In order to establish a *prima facie* case of obviousness, three criteria must be met. M.P.E.P. §706.02(j). Firstly, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *In re Fine*, 5 U.S.P.Q.2d 1586 (Fed. Cir. 1988). Secondly, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Thirdly, the prior art reference (or references) must teach or suggest all the claim limitations. *In re Royka*, 180 U.S.P.Q. 550 (C.C.P.A. 1974). The burden is on the Examiner to create a *prima facie* case of obviousness, not on the Applicant to provide reasons for patentability. See *In re Fine*, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). The Examiner has not created a *prima facie* case of obviousness to reject claim 39 over the Barker '015 patent in view of the Moxey '670 patent, the Trevino '797 patent and the Arcand '931 patent.

Discussion:

Claim 39 depends from claim 30, and since claim 30 defines patentable subject matter as discussed above, claim 39 defines patent subject matter. Furthermore, claim 39 further defines the measuring and layout device as including tape having a pivotal pointer at a distal end. As discussed above regarding claim 16, there is no suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to add the pin attachment 100 of the Arcand '931 patent to the Barker '015 patent, the Moxey '670 patent or a combination thereof. Therefore, there is no suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to add the pin attachment 100 of the Arcand '931 patent to the Barker '015 patent, the

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Moxey '670 patent, the Trevino '797 patent or a combination thereof. Accordingly, claim 39 is in condition for allowance.

Accordingly, claim 39 is allowable over the Barker '015 patent in view of the Moxey '670 patent, the Trevino '797 patent and the Arcand '931 patent, and the Board is requested to reverse the rejection of these claims.

Issue 14: Whether claims 17, 40, 43, 45, 47, 48 and 50 are unpatentable over U.S. Patent No. 3,269,015 to Barker?

Argument: In order to establish a *prima facie* case of obviousness, three criteria must be met. M.P.E.P. §706.02(j). Firstly, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *In re Fine*, 5 U.S.P.Q.2d 1586 (Fed. Cir. 1988). Secondly, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Thirdly, the prior art reference (or references) must teach or suggest all the claim limitations. *In re Royka*, 180 U.S.P.Q. 550 (C.C.P.A. 1974). The burden is on the Examiner to create a *prima facie* case of obviousness, not on the Applicant to provide reasons for patentability. See *In re Fine*, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). The Examiner has not created a *prima facie* case of obviousness to reject claims 17, 40, 43, 45, 47, 48 and 50 over the Barker '015 patent.

Discussion:

Claim 17 defines a method of measuring and laying out a template of a room including, among other things, providing a stationary member, providing a tape measure, extending the tape measure to a critical feature of an area in a room to be measured and recording direction and distance information on the stationary member from the tape measure relating to the critical feature. The prior art of record does not disclose or suggest the above noted features of claim 17.

In regard to the first criterion of obviousness, there is no suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference. According to the Office Action, the Barker '015 patent

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does not disclose a method of measuring and laying out a room, but the Barker '015 patent "teaches that his layout device can be used to create a layout a surface area having critical features to which the tape is extended to, i.e., any surface area" and that "it would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize the Barker device to create a layout of a room since a room has a surface area and critical features and Barker discloses that his device can be used to layout any surface area." Office Action mailed January 22, 2003, paragraph 21. First, the mere fact that an object could be used in a method is not by itself sufficient to support a finding of obviousness. The prior art must provide a motivational reason for the worker in the art, without the benefit of Applicants' specification, to make the necessary changes in the reference device. *See Ex parte Chicago Rawhide Mfg. Co.*, 223 USPQ 351, 353 (Bd. Pat. App. & Inter. 1984). Applicant submits that the Examiner has not provided any motivation. Second, the Barker '015 patent does not even disclose creating a template or laying out an area. The Barker '015 patent only discloses drawing arcs 40 and lines 39. Accordingly, there is no suggestion or motivation, either in the reference itself or in the knowledge generally available to one of ordinary skill in the art, to modify the reference. Therefore, claim 17 is in condition for allowance.

Furthermore, in regard to the third criterion of obviousness, the prior art reference does not teach or suggest all the claim limitations. The Barker '015 patent does not disclose recording direction and distance information on a stationary member from a tape measure to a critical feature. The Barker '015 patent only discloses drawing arcs 40 and lines 39 with scribe pins 25, 33 and 37. Therefore, the prior art reference does not teach or suggest all the claim limitations. Accordingly, claim 17 is in condition for allowance.

Claims 18 and 40-53 depend from claim 17, and since claim 17 defines unobvious patentable subject matter, claims 18 and 40-53 define patentable subject matter.

Accordingly, claims 17, 18 and 40-53 are allowable over the Barker '015 patent, and the Board is requested to reverse the rejection of these claims.

Issue 15: Whether claims 18 and 52 are unpatentable over U.S. Patent No. 3,269,015 to Barker in view of U.S. Patent No. 6,115,931 to Arcand?

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Argument: In order to establish a *prima facie* case of obviousness, three criteria must be met. M.P.E.P. §706.02(j). Firstly, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *In re Fine*, 5 U.S.P.Q.2d 1586 (Fed. Cir. 1988). Secondly, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Thirdly, the prior art reference (or references) must teach or suggest all the claim limitations. *In re Royka*, 180 U.S.P.Q. 550 (C.C.P.A. 1974). The burden is on the Examiner to create a *prima facie* case of obviousness, not on the Applicant to provide reasons for patentability. See *In re Fine*, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). The Examiner has not created a *prima facie* case of obviousness to reject claims 18 and 52 over the Barker '015 patent in view of the Arcand '931 patent.

Discussion:

Claims 18 and 52 depend from claim 17, and since claim 17 defines patentable subject matter as discussed above, claims 18 and 52 define patent subject matter. Furthermore, claim 18 further defines the method of measuring and laying out a template as including providing a pointer on an end of the tape measure adapted to be accurately aligned with the critical feature of the area and recording the information on the stationary member as the pointer aligns with the critical feature. Moreover, claim 52 further defines the method of measuring and laying out a template as including connecting a pivotal pointer to a distal end of the tape measure. As discussed above regarding claim 16, there is no suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to add the pin attachment 100 of the Arcand '931 patent to the Barker '015 patent.

Accordingly, claims 18 and 52 are in condition for allowance.

Accordingly, claims 18 and 52 are allowable over the Barker '015 patent in view of the Arcand '931 patent, and the Board is requested to reverse the rejection of these claims.

Issue 16: Whether claim 41 is unpatentable over U.S. Patent No. 3,269,015 to Barker in view of U.S. Patent No. 4,835,870 to Rauch et al?

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Argument: In order to establish a *prima facie* case of obviousness, three criteria must be met. M.P.E.P. §706.02(j). Firstly, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *In re Fine*, 5 U.S.P.Q.2d 1586 (Fed. Cir. 1988). Secondly, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Thirdly, the prior art reference (or references) must teach or suggest all the claim limitations. *In re Royka*, 180 U.S.P.Q. 550 (C.C.P.A. 1974). The burden is on the Examiner to create a *prima facie* case of obviousness, not on the Applicant to provide reasons for patentability. See *In re Fine*, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). The Examiner has not created a *prima facie* case of obviousness to reject claim 41 over the Barker '015 patent in view of the Rauch et al. '870 patent.

Discussion:

Claim 41 further defines the method of measuring and laying out of claims 40 and 17 by rotatably attaching a carrier to the stationary member, with the carrier including a front leg adjacent a top of the stationary member and with the front leg having guides for the tape measure and a straight edge, and by stating that the step of recording information includes making a mark along the straight edge of the front leg.

The prior art of record does not disclose or suggest the claimed features of claim 41. First, claim 41 depends from claim 17, and since claim 17 defines patentable subject matter as discussed above, claim 41 defines patentable subject matter. Second, the prior art references do not teach or suggest all the claim limitations. According to the Office Action, "in utilizing the device disclosed by Barker and Rauch to layout a surface area of a room, the method steps of claim 41 would inherently be followed." However, neither the Barker '015 patent nor the Rauch et al. '870 patent disclose making a mark along a straight edge of a front leg of a carrier. Furthermore, "[t]he fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic." M.P.E.P. § 2112; *In re Rijchaert*, 28 U.S.P.Q.2d 1955, 1957 (Fed. Cir. 1993). "In relying upon the theory of inherency, the Examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic

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necessarily flows from the teachings of the applied prior art." *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. and Inter. 1990) (emphasis original). A method of measuring and laying out an area including the step of making a mark along a straight edge of a front leg is not necessarily disclosed in the Barker '015 patent or the Rauch et al. '870 patent.

Accordingly, claim 41 is in condition for allowance.

Accordingly, claim 41 is allowable over the Barker '015 patent in view of the Rauch et al. '870 patent, and the Board is requested to reverse the rejection of these claims.

Issue 17: Whether claims 44 and 46 are unpatentable over U.S. Patent No. 3,269,015 to Barker in view of U.S. Patent No. 4,344,231 to Martinez?

Argument: In order to establish a *prima facie* case of obviousness, three criteria must be met. M.P.E.P. §706.02(j). Firstly, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *In re Fine*, 5 U.S.P.Q.2d 1586 (Fed. Cir. 1988). Secondly, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Thirdly, the prior art reference (or references) must teach or suggest all the claim limitations. *In re Royka*, 180 U.S.P.Q. 550 (C.C.P.A. 1974). The burden is on the Examiner to create a *prima facie* case of obviousness, not on the Applicant to provide reasons for patentability. See *In re Fine*, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). The Examiner has not created a *prima facie* case of obviousness to reject claims 44 and 46 over the Barker '015 patent in view of the Martinez '231 patent.

Discussion:

Claims 44 and 46 depend from claim 17, and since claim 17 defines patentable subject matter as discussed above, claims 44 and 46 define patent subject matter. Accordingly, claims 44 and 46 are in condition for allowance.

Furthermore, in regard to claim 44, there is no suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to combine the reference teachings. Claim 44 defines the measuring and layout device as including a board having non-slip feet. According to the Office Action, the Martinez '231 patent

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includes "a stationary member (12) with non-slip feet (18)" and that "[i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Barker by adding non-slip feet . . . in order to prevent the stationary member from moving when the tape is being retracted or extended from the tape measure." Office Action mailed January 22, 2003, paragraph 24. However, the Martinez '231 patent discloses a board 12 having legs 18 being somewhat pointed so that the board 12 can be securely positioned on a green 4. The Barker '015 patent does not disclose its instrument as being used on a green and there is no reason or suggestion to use the instrument as disclosed by the Barker '015 patent on a green. Therefore, there is no suggestion or motivation for adding legs 18 to the instruments as disclosed by the Barker '015 patent because the legs would never be used as disclosed by the Martinez '231 patent. Accordingly, claim 44 is in condition for allowance.

Accordingly, claims 44 and 46 are allowable over the Barker '015 patent in view of the Martinez '231 patent, and the Board is requested to reverse the rejection of these claims.

Issue 18: Whether claim 49 is unpatentable over U.S. Patent No. 3,269,015 to Barker in view of U.S. Patent No. 5,768,797 to Trevino?

Argument: In order to establish a *prima facie* case of obviousness, three criteria must be met. M.P.E.P. §706.02(j). Firstly, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *In re Fine*, 5 U.S.P.Q.2d 1586 (Fed. Cir. 1988). Secondly, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Thirdly, the prior art reference (or references) must teach or suggest all the claim limitations. *In re Royka*, 180 U.S.P.Q. 550 (C.C.P.A. 1974). The burden is on the Examiner to create a *prima facie* case of obviousness, not on the Applicant to provide reasons for patentability. See *In re Fine*, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). The Examiner has not created a *prima facie* case of obviousness to reject claim 49 over the Barker '015 patent in view of the Trevino '797 patent.

Discussion:

Claim 49 depends from claim 17, and since claim 17 defines patentable subject matter

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as discussed above, claim 49 defines patentable subject matter. Accordingly, claim 49 is in condition for allowance.

Accordingly, claim 49 is allowable over the Barker '015 patent in view of the Trevino '797 patent, and the Board is requested to reverse the rejection of these claims.

Issue 19: Whether claim 51 is unpatentable over U.S. Patent No. 3,269,015 to Barker in view of French Patent 2,614,982 to Mercier?

Argument: In order to establish a *prima facie* case of obviousness, three criteria must be met. M.P.E.P. §706.02(j). Firstly, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *In re Fine*, 5 U.S.P.Q.2d 1586 (Fed. Cir. 1988). Secondly, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Thirdly, the prior art reference (or references) must teach or suggest all the claim limitations. *In re Royka*, 180 U.S.P.Q. 550 (C.C.P.A. 1974). The burden is on the Examiner to create a *prima facie* case of obviousness, not on the Applicant to provide reasons for patentability. See *In re Fine*, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). The Examiner has not created a *prima facie* case of obviousness to reject claim 51 over the Barker '015 patent in view of French Patent 2,614,982 to Mercier.

Discussion:

Claim 51 depends from claim 17, and since claim 17 defines patentable subject matter as discussed above, claim 51 defines patent subject matter. Accordingly, claim 51 is in condition for allowance.

Accordingly, claim 51 is allowable over the Barker '015 patent in view of French Patent 2,614,982 to Mercier, and the Board is requested to reverse the rejection of these claims.

**IX. Conclusion**

Each appealed claim is definite and recites features that are not disclosed by any of the cited references and it would not have been obvious to modify the cited references to include the

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recited features of the appealed claims. The references upon which the Examiner relies in his rejections of the finally rejected claims do not disclose or suggest a carrier or an angle and distance device fixedly and rotatably connected to a stationary member or a method of measuring and layout including marking or recording both angle or direction and distance information. Applicant's invention resolves problems and inconveniences experienced in the prior art, and therefore represents a significant advancement in the art. Applicant earnestly requests that the Examiner's final rejection of 2-18, 25, 30-67 and 69, inclusive, be reversed, and that the subject application be passed to issuance forthwith.

Respectfully submitted,

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5/15/03  
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**Appendix of Claims (37 CFR §1.192(c)(9))**

1. Cancelled.
2. (Amended) The measuring and layout device of claim 12, wherein:  
the angle and distance device includes a tape measure that incorporates the tape.
3. The measuring and layout device of claim 2, wherein:  
the angle and distance device includes a carrier that is adapted to hold the tape measure.
4. The measuring and layout device of claim 3, wherein:  
the carrier is pivotally coupled to the stationary member.
5. The measuring and layout device of claim 4, wherein:  
the carrier includes a front leg adjacent a top of the stationary member; and  
the front leg has guides for the tape and a straight edge for making the template.
6. The measuring and layout device of claim 4, wherein:  
the carrier includes an integral housing; and  
the tape measure is located within the housing.
7. (Amended) The measuring and layout device of claim 12, wherein:  
the stationary member is a board.
8. The measuring and layout device of claim 7, wherein:  
the board includes non-slip feet.
9. (Three Times Amended) A measuring and layout device comprising:  
a stationary member having a flat surface adapted to be marked on; and

an angle and distance device fixedly and rotatably attached to the stationary member, the angle and distance device including a longitudinally and laterally rigid extendable tape that can be extended from a central point and an edge that facilitates reliably marking on the stationary member to form an accurate template as the angle and distance device is rotated and the tape is extended and retracted to critical features of an area;

wherein the template is formed by markings written directly onto the stationary member.

10. (Twice Amended) The measuring and layout device of claim 12, wherein:

the template is formed by markings written onto a paper placed on the stationary member.

11. (Amended) The measuring and layout device of claim 9, wherein:

the stationary member has a circular configuration.

12. (Three Times Amended) A measuring and layout device comprising:

a stationary member having a flat surface adapted to be marked on; and

an angle and distance device fixedly and rotatably attached to the stationary member, the angle and distance device including a longitudinally and laterally rigid extendable tape that can be extended from a central point and an edge that facilitates reliably marking on the stationary member to form an accurate template as the angle and distance device is rotated and the tape is extended and retracted to critical features of an area;

wherein the stationary member has a substantially semi-circular configuration.

13. (Amended) The measuring and layout device of claim 12, wherein:

the angle and distance device includes a tape measure extender for mechanically extending the tape, thereby allowing a single person to create the template while staying in a single central location.

14. (Amended) The measuring and layout device of claim 12, wherein:  
the tape includes an end with a holder attached thereto; and  
the holder is configured to secure a writing utensil.
15. (Amended) The measuring and layout device of claim 12, wherein:  
the angle and distance device has a digital readout for accurately communicating a distance that the tape is extended from the angle and distance device.
16. (Three Times Amended) A measuring and layout device comprising:  
a stationary member having a flat surface adapted to be marked on; and  
an angle and distance device fixedly and rotatably attached to the stationary member, the angle and distance device including a longitudinally and laterally rigid extendable tape that can be extended from a central point and an edge that facilitates reliably marking on the stationary member to form an accurate template as the angle and distance device is rotated and the tape is extended and retracted to critical features of an area;  
wherein the tape has a pivotal pointer at a distal end.
17. (Amended) A method of measuring and laying out a template of a room comprising:  
providing a stationary member;  
providing a tape measure;  
extending the tape measure to a critical feature of an area in a room to be measured;  
and  
recording direction and distance information on the stationary member from the tape measure relating to the critical feature.
18. The method of measuring and laying out a template of claim 17, further comprising:  
providing a pointer on an end of the tape measure adapted to be accurately aligned with

the critical feature of the area; and

recording the information of the stationary member as the pointer aligns with the critical feature.

19. Cancelled.

20. Cancelled.

21. Cancelled.

22. Cancelled.

23. Cancelled.

24. Cancelled.

25. (Three Times Amended) A method of measuring and laying out an area comprising:  
providing a stationary member having a flat surface adapted to be marked on;  
fixedly and rotatably attaching an angle and distance device to the stationary member,  
the angle and distance device including a longitudinally and laterally rigid extendable tape that  
can be extended from a central point and an edge that facilitates reliably marking on the  
stationary member; and  
forming an accurate template by reliably marking on the stationary member  
as the angle and distance device is rotated and the tape is extended and retracted to critical  
features of the area.

26. (Allowed) A measuring and layout device comprising:  
a stationary member having a flat surface adapted to be marked on;

an angle and distance device rotatably attached to the stationary member, the angle and distance device including a longitudinally and laterally rigid extendable tape that can be extended from a central point and an edge that facilitates reliably marking on the stationary member to form an accurate template as the angle and distance device is rotated and the tape is extended and retracted to critical features of an area; and

a motor and motor controller operably connected to the longitudinally and laterally rigid tape for extending, retracting and axially rotating the tape;

the motor controller being programmed to record data and create an electronic version of the template.

27. (Allowed) The measuring and layout device of claim 26, wherein:

the tape includes a marker on one end, and the motor controller is programmed to move the marker in accordance with the template on a surface.

28. (Allowed) The measuring and layout device of claim 27, wherein:

the template comprises a picture.

29. (Allowed) The measuring and layout device of claim 26, wherein:

the motor controller is programmed for automatic operation to create the template and to draw the template on a workpiece.

30. (Twice Amended) A measuring and layout device comprising:

a stationary member having a flat surface adapted to be marked upon;

a carrier fixedly and rotatably attached to the stationary member; and

an extendable tape connected to the carrier, the tape being configured to be extended from the carrier, the tape including an edge that facilitates reliably marking on the stationary member to form an accurate template as the carrier is rotated and the tape is extended and retracted to critical features of an area;

wherein the carrier includes a tape extender for mechanically extending the tape, thereby allowing a single person to create the template while staying in a single central location.

31. The measuring and layout device of claim 30, wherein:  
the carrier includes a front leg adjacent a top of the stationary member; and  
the front leg has guides for the tape and a straight edge for making the template.
32. The measuring and layout device of claim 30, wherein:  
the stationary member is a board.
33. The measuring and layout device of claim 32, wherein:  
the board includes non-slip feet.
34. The measuring and layout device of claim 30, wherein:  
the template includes markings written directly onto the stationary member.
35. The measuring and layout device of claim 30, wherein:  
the template includes markings written onto a paper placed on the stationary member.
36. The measuring and layout device of claim 30, wherein:  
the stationary member has a circular configuration.
37. The measuring and layout device of claim 30, wherein:  
the stationary member has a substantially semi-circular configuration.
38. The measuring and layout device of claim 30, wherein:  
the tape includes an end with a holder attached thereto; and

the holder is configured to secure a writing utensil.

39. The measuring and layout device of claim 30, wherein:  
the tape has a pivotal pointer at a distal end.
40. (Amended) The method of measuring and laying out of claim 17, further including:  
rotatably attaching a carrier to the stationary member; and  
connecting the tape measure to the carrier.
41. The method of measuring and layout out of claim 40, wherein:  
the carrier includes a front leg adjacent a top of the stationary member;  
the front leg has guides for the tape measure and a straight edge; and  
the step of recording information on the stationary member including making a mark  
along the straight edge of the front leg.
42. The method of measuring and laying out of claim 40, wherein:  
the tape measure is located within the carrier.
43. The method of measuring and laying out of claim 17, wherein:  
the stationary member is a board.
44. The method of measuring and laying out of claim 43, wherein:  
the board includes non-slip feet.
45. The method of measuring and laying out of claim 17, wherein:  
the step of recording information on the stationary member includes writing  
information directly onto the stationary member.

46. The method of measuring and laying out of claim 17, wherein:  
the step of recording information on the stationary member includes writing information onto a paper placed on the stationary member.
47. The method of measuring and laying out of claim 17, wherein:  
the stationary member has a circular configuration.
48. The method of measuring and laying out of claim 17, wherein:  
the stationary member has a substantially semi-circular configuration.
49. The method of measuring and laying out of claim 17, further including:  
providing a tape measure extender for mechanically extending the tape measure; and  
extending the tape measure with the tape measure extender.
50. The method of measuring and laying out of claim 17, further including:  
attaching a holder to an end of the tape measure;  
wherein the holder is configured to secure a writing utensil to the end of the tape measure.
51. The method of measuring and laying out of claim 17, wherein:  
the tape measure has a digital readout for accurately communicating a distance that the tape measure is extended from the stationary member.
52. The method of measuring and laying out of claim 17, further including:  
connecting a pivotal pointer to a distal end of the tape measure.
53. The method of measuring and laying out of claim 17, wherein:  
the step of recording information on the stationary member includes writing a distance

of the tape measure from the stationary member to the critical feature on the stationary member and writing angle information on the stationary member signifying an angle of the tape measure relative to the stationary member.

54. The method of measuring and laying out of claim 25, wherein:  
the angle and distance device includes a tape measure that incorporates the tape.
55. The method of measuring and laying out of claim 54, further including:  
providing the angle and distance device with a carrier that is adapted to hold the tape measure.
56. The method of measuring and laying out of claim 55, further including:  
pivotally coupling the carrier to the stationary member.
57. The method of measuring and laying out of claim 56, wherein:  
the carrier includes a front leg adjacent a top of the stationary member;  
the front leg has guides for the tape measure and a straight edge; and  
the step of forming a template includes making a mark along the straight edge of the front leg.
58. The method of measuring and laying out of claim 25, wherein:  
the stationary member is a board.
59. The method of measuring and laying out of claim 25, wherein:  
the board includes non-slip feet.
60. The method of measuring and laying out of claim 25, wherein:  
the step of forming the accurate template includes writing directly onto the stationary

member.

61. The method of measuring and laying out of claim 25, wherein:  
the step of forming the accurate template includes writing onto a paper placed on the stationary member.
62. The method of measuring and laying out of claim 25, wherein:  
the stationary member has a circular configuration.
63. The method of measuring and laying out of claim 25, wherein:  
the stationary member has a substantially semi-circular configuration.
64. The method of measuring and laying out of claim 25, further including:  
providing the angle and distance device with a tape extender for mechanically extending the tape; and  
extending the tape with the tape extender.
65. The method of measuring and laying out of claim 25, further including:  
attaching a holder to an end of the tape measure;  
wherein the holder is configured to secure a writing utensil to the end of the tape measure.
66. The method of measuring and laying out of claim 25, further including:  
providing the angle and distance device with a digital readout for accurately communicating a distance that the tape is extended from the angle and distance device.
67. The method of measuring and laying out of claim 25, further including:  
connecting a pivotal pointer to a distal end of the tape.

68. (Amended) A method of measuring and laying out an area comprising:  
providing a stationary member having a flat surface adapted to be marked on;  
rotatably coupling an angle and distance device to the stationary member, the angle and  
distance device including a longitudinally and laterally rigid extendable tape that can be  
extended from a central point and an edge that facilitates reliably marking on the stationary  
member; and

forming an accurate template by reliably marking on the stationary member  
as the angle and distance device is rotated and the tape is extended and retracted to critical  
features of the area; wherein

the step of forming an accurate template includes writing a distance of the tape from the  
stationary member to the critical feature on the stationary member and writing angle information  
on the stationary member signifying an angle of the tape relative to the stationary member.

69. A method of measuring and laying out an area comprising:

providing a stationary member;  
rotatably coupling an angle and distance device to the stationary member, the angle and  
distance device including a longitudinally and laterally rigid extendable tape that can be  
extended from a central point; and

forming an accurate template as the angle and distance device is rotated and the tape is  
extended and retracted to a plurality of critical features of the area;

wherein the step of forming an accurate template includes recording a distance of the  
tape from the stationary member to each of the plurality of critical features and recording  
angle information for each distance recording signifying an angle of the tape relative to the  
stationary member during each distance recording; and

wherein the stationary member remains stationary during at least two distance and angle  
information recordings.

member.

61. The method of measuring and laying out of claim 25, wherein:  
the step of forming the accurate template includes writing onto a paper placed on the stationary member.
62. The method of measuring and laying out of claim 25, wherein:  
the stationary member has a circular configuration.
63. The method of measuring and laying out of claim 25, wherein:  
the stationary member has a substantially semi-circular configuration.
64. The method of measuring and laying out of claim 25, further including:  
providing the angle and distance device with a tape extender for mechanically extending the tape; and  
extending the tape with the tape extender.
65. The method of measuring and laying out of claim 25, further including:  
attaching a holder to an end of the tape measure;  
wherein the holder is configured to secure a writing utensil to the end of the tape measure.
66. The method of measuring and laying out of claim 25, further including:  
providing the angle and distance device with a digital readout for accurately communicating a distance that the tape is extended from the angle and distance device.
67. The method of measuring and laying out of claim 25, further including:  
connecting a pivotal pointer to a distal end of the tape.